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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re MARTHA O., et al., Persons
Coming Under the Juvenile Court Law.

LOS ANGELES DEPARTMENT OF
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

R. O.,

Defendant and Appellant.

B267063

(Los Angeles County
Super. Ct. No. DK10745)

APPEAL from an order of the Superior Court of
Los Angeles County, Marguerite Downing, Judge. Affirmed.

Konrad S. Lee, under appointment by the Court of Appeal,
for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,
Acting Assistant County Counsel, and Jeanette Cauble,
Principal Deputy County Counsel for Plaintiff and Respondent.

In this dependency appeal, R.O. (R.) challenges an order of the juvenile court denying him presumed father status as to Martha O., who is the biological child of R.'s former girlfriend and another man.¹ We conclude the juvenile court did not abuse its discretion in denying R. presumed father status, and thus we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Martha (born August 2011) is the child of Silvia C. (mother) and M.R. R. was romantically involved with mother at various times and is the biological father of Martha's half-brother, R. Jr. (born May 2013). This appeal concerns Martha only.²

I.

Detention

The Los Angeles County Department of Children and Family Services (DCFS) received a child neglect referral concerning Martha and R. Jr. in March 2015. DCFS investigated and reported as follows.

¹ R. purports to appeal from two separate orders, dated July 28, 2015, and October 7, 2015. However, because R.'s appellant's opening brief does not assert error as to the July 28, 2015 order, we deem the appeal from that order abandoned. (E.g., *Roos v. Honeywell Internat., Inc.* (2015) 241 Cal.App.4th 1472, 1487 ["Points not raised in a party's opening brief are considered abandoned"].)

² Mother has five older children; her parental rights to those children were terminated in July 2009, and they were adopted by their maternal grandmother in December 2009.

R. said he and mother were never married, but they were involved romantically from May 2009 until R.'s arrest in September 2013 for possession of stolen property, burglary, assault, and battery.³ R. has an extensive criminal record, which includes an arrest in November 2009 for theft, for which he was convicted and received a three-year prison sentence; and a September 2013 arrest for possessing a stolen vehicle and first degree burglary, for which he received a 72-month prison sentence. R. said Martha is not his biological child, but he considered her his daughter because "he raised her." R. was present for Martha's birth and is identified as her father on her birth certificate.

Mother said R. began physically abusing her very early in their relationship and threatened to kill her many times. Mother became pregnant with Martha by M.R. while R. was in jail;⁴ after his release, R. repeatedly beat mother because she had become pregnant with another man's child. When mother was about eight months pregnant, R. threw a box of diapers at mother's stomach because he was reminded that the child was not his. R. signed Martha's birth certificate, but mother said a DNA test had confirmed that R. was not Martha's father.

A few months after Martha's birth, mother moved in with the maternal grandmother; subsequently, it appears that mother and R. lived together on a sporadic basis. When the children

³ R. told DCFS that he was arrested in September 2014, but his arrest records reflect that he actually was arrested in September 2013.

⁴ Martha was born August 2011; therefore, we assume that mother became pregnant with Martha in late 2010 or early 2011.

were detained in April 2015, mother reported that she had not had contact with R. for over a year and a half and did not know where he was living.⁵ Mother was afraid of R. and did not want him to know where she and the children lived.

As of the April 9, 2015 detention hearing, mother and the children were living together at an inpatient drug rehabilitation program. DCFS recommended that the children remain released to mother on the condition that she complete that program.

II.

Petition; R.'s Request for Presumed Father Status

DCFS filed a juvenile dependency petition on April 9, 2015 pursuant to Welfare and Institutions Code section 300, subdivisions (a) and (b). It alleged: (a-1, b-3) Mother and R. had a history of domestic violence in the children's presence, including R. striking mother's head and body with his fists, choking mother, and threatening to hit mother with a rock; (b-1, b-2) Mother and R. had histories of illegal drug use and were current users of methamphetamines, which rendered them incapable of caring for the children.

On April 9, 2015, the court ordered the children detained and placed with mother, on the condition that mother remain in a drug program and test substance-free. R. was granted monitored visitation with both children. The court entered a temporary restraining order requiring R. to stay away from mother and the children except during monitored visitation.

⁵ The length of mother's and R.'s separation is not entirely clear from the appellate record. During one interview, mother told the children's social worker (CSW) she had not seen R. in a year and a half; on another occasion, she said she had not seen him in six months.

On July 28, 2015, R. filed a JV-505 Statement Regarding Parentage. It said R. had signed a voluntary declaration of paternity at the hospital immediately after Martha's birth; Martha lived with R. from 2009 to 2013; R. had told "everyone . . . [m]y family and friends" that Martha was his child; R. had taken Martha to the "park," the "store," and on weekend visits; and R. had provided Martha with "milk, diapers, clothes."

On July 28, 2015, the court sustained the allegations of the petition and entered a permanent restraining order, with the same terms as the temporary restraining order, to expire July 28, 2018. The court declined to grant R. presumed father status at that time, but put the matter over to the next hearing. On August 4, 2015, R. filed a notice of appeal from the July 28, 2015 order.

At an October 7, 2015 status hearing, R. renewed his request for presumed father status; the court denied it. On October 23, 2015, R. filed a second notice of appeal from that order.

DISCUSSION

R. contends the juvenile court abused its discretion when it denied his request for presumed father status because "overwhelming evidence supported the conclusion [R.] was Martha's presumed father" under Family Code section 7611, subdivision (d). For the reasons that follow, we find no abuse of discretion, and thus we affirm.

I.

Legal Standards

A. Presumed Father Status

The child dependency statutes distinguish between "biological," "presumed," and "alleged" fathers. "A biological

father is one ‘ “who is related to the child by blood.” ’ (*In re E.T.* (2013) 217 Cal.App.4th 426, 438, quoting [Welf. & Inst. Code,] § 361.3, subd. (c)(2).) A ‘presumed father’ is one ‘ “who ‘promptly comes forward and demonstrates a full commitment to . . . paternal responsibilities—emotional, financial, and otherwise[.]’ ” ’ (*In re Jerry P.* [(2002)] 95 Cal.App.4th [793,] 801–802.) . . . [Citation.]’ [Citation.] An ‘alleged father’ ‘may be the father of a dependent child. However, he has not yet been established to be the child’s [biological] or presumed father.’ ” (*In re Jovanni B.* (2013) 221 Cal.App.4th 1482, 1488.)

Presumed father status is governed by Family Code section 7611. That section sets out several rebuttable presumptions under which a man may qualify as a presumed father, generally by marrying or attempting to marry the child’s mother. Alternatively, if the child’s biological mother and the potential presumed father were not married or did not attempt to marry around the time of the child’s birth, presumed father status may be demonstrated through Family Code section 7611, subdivision (d), which provides that “[a] person is presumed to be the natural parent of a child if . . . [¶] . . . [¶] [*he or she*] receives

*the child into his or her home and openly holds out the child as his or her natural child.” (Italics added.)*⁶

“In determining whether a man has ‘receiv[ed a] child into his home and openly h[eld] out the child’ as his own ([Fam. Code,] § 7611, subd. (d)), courts have looked to such factors as whether the man actively helped the mother in prenatal care; whether he paid pregnancy and birth expenses commensurate with his ability to do so; whether he promptly took legal action to obtain custody of the child; whether he sought to have his name placed on the birth certificate; whether and how long he cared for the child; whether there is unequivocal evidence that he had acknowledged the child; the number of people to whom he had acknowledged the child; whether he provided for the child after [he or she] no longer resided with him; whether, if the child needed public benefits, he had pursued completion of the requisite paperwork; and whether his care was merely incidental. [Citations.]” (*In re T.R.* (2005) 132 Cal.App.4th 1202,

⁶ Father asserts that he may be designated Martha’s presumed father because he executed a voluntary declaration of paternity. No such voluntary declaration appears in the record; in any event, even were such a document to exist, it would not entitle R. to presumed father status in this dependency proceeding. (See *In re Giovanni B.*, *supra*, 221 Cal.App.4th at p. 1492 [voluntary declaration of paternity “gives rise to an evidentiary presumption that the declarant is the child’s *biological father*, it does not entitle him to *presumed father* status.”].)

1211 (*T.R.*).⁷ A would-be presumed parent “is not required to show each and every one of these factors exists to obtain presumed parent status,” but “[t]he list . . . illuminate[s] a common thread: whether, through his or her conduct, an alleged parent has demonstrated a commitment to the minor child and the minor child’s well-being, thereby distinguishing the alleged parent as someone who has entered into a familial relationship with the child from someone who has not.” (*E.C. v. J.V.* (2012) 202 Cal.App.4th 1076, 1087.)

⁷ In general terms, the requirements of Family Code section 7611, subdivision (d) “are intended to describe a person who has established a ‘parent-child’ or ‘familial’ relationship with the child. (*Jason P. v. Danielle S.* (2014) 226 Cal.App.4th 167, 178.) To qualify under subdivision (d), a person must have a ‘fully developed parental relationship’ with the child. (*R.M. v. T.A.* (2015) 233 Cal.App.4th 760, 776, italics omitted (*R.M.*)). It is not enough to demonstrate ‘only a caretaking role and/or romantic involvement with a child’s parent.’ (*Id.* at p. 777.) Rather, the presumed parent must demonstrate “a full commitment to his [or her] paternal responsibilities—emotional, financial, and otherwise.”’ (*Jerry P.*, *supra*, 95 Cal.App.4th at pp. 801-802, fn. omitted.) While the juvenile court may consider a wide range of factors in making a presumed parent determination, as appropriate to the circumstances (see, e.g., [*T.R.*, *supra*, 132 Cal.App.4th at p. 1211]), the core issues are the person’s established relationship with and demonstrated commitment to the child.” (*In re Alexander P.* (2016) 1 Cal.App.5th 475, at p. 485.)

A man who claims entitlement to presumed father status has the burden of establishing by a preponderance of the evidence the facts supporting his entitlement. (*In re E.T.*, *supra*, 217 Cal.App.4th at p. 437; *T.R.*, *supra*, 132 Cal.App.4th at p. 1210.)

B. Standard of Review

R. contends that we should apply the substantial evidence standard of review to his request for presumed father status—i.e., that we should reverse if we conclude that substantial evidence supported his request to be deemed Martha’s presumed father. Not so. While we apply the substantial evidence test to a finding that a man *is* a presumed father, a different standard applies to a finding that a man *is not* a presumed father: “[W]here the trier of fact has expressly or implicitly concluded that the party with the burden of proof did not carry the burden and that party appeals, it is misleading to characterize the failure-of-proof issue as whether substantial evidence supports the judgment. This follows because such a characterization is conceptually one that allows an attack on (1) the evidence supporting the party who had no burden of proof, and (2) the trier of fact’s unassailable conclusion that the party with the burden did not prove one or more elements of the case [citations].

“Thus, where the issue on appeal turns on a failure of proof . . . , the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant *as a matter of law*. [Citations.] Specifically, the question becomes whether the appellant’s evidence was (1) ‘uncontradicted and unimpeached’ and (2) ‘of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a

finding.’ [Citation.]” (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528, italics added.)

II.

The Record Supports the Juvenile Court’s Conclusion that R. is Not Martha’s Presumed Father

R. contends that “[t]here is simply no question” that he met his burden to show he is Martha’s presumed father. For the reasons that follow, on this record, we do not agree.

First, there is absolutely no evidence on the present record that R. assisted mother during her pregnancy, actively helped her obtain prenatal care, or helped her pay pregnancy or birth expenses. To the contrary, the *only* evidence of his interaction with mother during her pregnancy is that he was incarcerated during the first part of her pregnancy, and that upon his release, he repeatedly beat mother and threw a box of diapers at her stomach because she had become pregnant by another man.

Second, R. asserts that Martha lived with him from May 2009 until his arrest in September 2013, but the record suggests otherwise. Martha was not born until August 2011, so she unquestionably did not live with R. until at least that time. It appears that mother and Martha did live with R. for a brief period after Martha’s birth, but mother said she left R. and moved back to maternal grandmother’s home in Wasco, California, “[a] few months later.” When R. followed mother to Wasco, mother resumed a relationship with him, but said she lived with him for only “a few weeks.”

Third, R.’s assertion that he supported Martha financially is also unsupported by the record. The sole evidence of financial support is R.’s statement on the JV-505 form that he provided Martha with “milk, diapers, clothes,” but nothing indicates that he did so on a regular basis or to any significant degree. An occasional purchase of food or diapers does not entitle an individual to presumed father status—and nothing in the record suggests that R.’s financial support of Martha was more than sporadic or *de minimus*. Further, nothing in the record indicates that R. made any efforts to provide financial support to Martha during the periods when he was not living with her—or, indeed, that he had a source of income from which he could do so.

Finally, there is no evidence on the present record of a parent-child relationship between R. and Martha. The record contains only one account of contact between R. and Martha, and the description of that contact undermines, rather than supports, the existence of a parent-child relationship. According to mother’s drug counselor, R. approached mother and Martha prior to the April 9, 2015 hearing; as he did so, Martha “looked afraid” and “pulled away from” R.

On this record, therefore, the juvenile court was not required to conclude that R.’s actions triggered the statutory presumption of presumed parentage. (See *In re Cheyenne B.* (2012) 203 Cal.App.4th 1361, 1380 [juvenile court did not err in denying request for presumed father status where substantial evidence supported finding that biological father did not receive child into his home]; *In re J.H.* (2011) 198 Cal.App.4th 635, 646-647 [same].)

R. contends that even if he did not “strictly [meet] the requirements of presumed fatherhood,” the juvenile court

nonetheless erred in not granting him presumed father status because “no other father had stepped up to assume fatherly duties towards the child.” We do not agree. As one court has noted, “The well-intentioned desire to provide a child with two parents does not trump the need to make sure that the persons we designate actually are the parents. Where, as here, there is an unknown biological father who may have an interest in parenting his biological child if he knew he had one, a precipitous finding that an unrelated man is the presumed father has a potential for mischief that could well be contrary to the best interests of the child.” (*In re D.M.* (2012) 210 Cal.App.4th 541, 555.)

DISPOSITION

The October 7, 2015 order denying R. presumed father status is affirmed.

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EDMON, P. J.

We concur:

ALDRICH, J.

STRATTON, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.